

# INDIANA DEATH PENALTY FACTS

(Last Updated 12/03/04)

## INTERNATIONALLY

- ☐ More than half of the world's nations have abolished the death penalty in law or in practice, including more than 30 in the past decade.
- ☐ In 1999, the U.S. executed more people than any nation but China and the Congo.

## NATIONALLY

- ☐ 38 states have a death penalty.
- ☐ These 12 states do not have a death penalty. (Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin.)

## INDIANA

### INDIANA'S DEATH PENALTY STATUTE

#### Its History

- ☐ In 1972, the U.S. Supreme Court in Furman v. Georgia held all state death penalty sentencing statutes were unconstitutional under the Eighth Amendment's cruel and unusual clause because they allowed for arbitrary and capricious imposition of death and left too great a risk that improper factors such as race could affect the sentencing decision. The sentences of the 7 men on Indiana's death row at the time of this decision were all reduced to life in prison.
- ☐ In 1973, the Indiana General Assembly enacted a new death penalty sentencing statute to replace the statute struck down by the U.S. Supreme Court in Furman.
- ☐ In 1976, the U.S. Supreme Court in Woodson v. North Carolina struck down North Carolina's death penalty sentencing statute, which was similar to Indiana's statute. In Woodson and accompanying cases, the Court indicated that sentencing in capital cases requires that the sentencer's discretion be carefully guided and channeled, while at the same time providing for individualized decisions for each defendant.
- ☐ In 1977, the Indiana Supreme Court struck down Indiana's 1973 death penalty sentencing statute based on the U.S. Supreme Court decision in Woodson. The death sentences of the 8 men on Indiana's death row were set aside.
- ☐ On October 1, 1977, a new Indiana death penalty sentencing statute,

modeled on statutes upheld by U.S. Supreme Court, took effect. With modifications, (see statutory changes, below) it remains in effect today.

## **How It Works**

In Indiana, the death penalty is available only for the crime of murder, and is available for murder only if the prosecution can prove the existence of at least one of 16 “aggravating circumstances” identified by the Indiana General Assembly. These circumstances are set out in the state’s death penalty statute, at IC 35-50-2-9. In order to seek the death penalty, the prosecutor must allege the existence of at least one of the aggravating circumstances set out in the statute.

If the case proceeds to trial, and the defendant is convicted of murder, the trial proceeds to a second phase to determine the appropriate penalty. The jury hears evidence regarding the existence of the alleged aggravating circumstance(s) and any mitigating circumstances – facts which would lead them to recommend a lesser sentence. They are required to return a special verdict form indicating whether they unanimously find the existence of each charged statutory aggravating circumstance beyond a reasonable doubt. They are not allowed to recommend that the defendant be sentenced to death or life without parole unless they unanimously find that the state has proved the existence of at least one alleged aggravating circumstance beyond a reasonable doubt, and also find that the aggravating circumstance(s) outweigh the mitigating circumstances.

Prior to 7/1/2002, the jury’s sentencing decision was merely a recommendation and was not binding on the trial court. On or after 7/1/2002, if the jury reaches a unanimous decision on the appropriate penalty, its decision is binding upon the trial court. However, if the jury cannot unanimously agree, the trial court proceeds to sentence the defendant as if the jury had not been involved in the sentencing process. The judge cannot sentence a defendant to death or to life without parole, however, unless he or she makes the same findings that the jury was required to make.

## **Other Statutory Changes**

- ☐ In 1987, the General Assembly made 16 the minimum age at which an individual could be eligible for the death penalty; the previous age of eligibility had been 10. (Effective 7/1/02, the age of eligibility is 18; see statutory change made in 2002, below.)
- ☐ In 1989, the General Assembly created the Indiana Public Defender Commission to set standards for the appointment and compensation of attorneys appointed to represent persons facing the death penalty and authorized the Commission to reimburse counties 50% of their expenditures for defense representation.
- ☐ On January 1, 1992, the Indiana Supreme Court’s amendments to Criminal

Rule 24 setting mandatory standards for the appointment and compensation of trial and appellate counsel in death penalty cases became effective.

- ❑ In 1993, the General Assembly authorized Life Without Parole as a sentencing option in capital murder cases. As with the death penalty, those under sixteen are not eligible for Life Without Parole. (Effective 7/1/2002, minimum age of eligibility for death penalty is 18; 16 and 17-year-olds remain eligible for Life Without Parole. See statutory change made in 2002, below.)
- ❑ In 1994, the General Assembly made mentally retarded individuals ineligible for death or life without parole.
- ❑ In 1995, the General Assembly changed the means of execution in Indiana from electrocution to lethal injection the means of execution in Indiana. Indiana is one of 37 states which have adopted lethal injection.
- ❑ In 2002, the General Assembly raised the minimum age of eligibility for the death penalty in Indiana from 16 to 18; 16 & 17-year-olds remain eligible for life without parole. The General Assembly also made unanimous jury penalty recommendations binding.

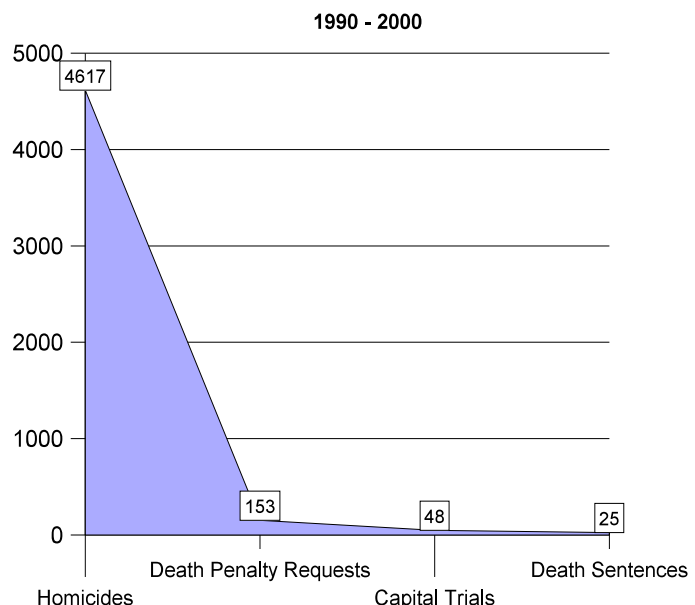
## INDIANA'S DEATH PENALTY IN PRACTICE

### Charging, Trial, and Sentencing

The prosecution is not required to seek the death penalty in every case in which an aggravating circumstance might exist and the defendant is eligible for death. The determination whether to seek the death penalty against a particular defendant on a particular murder charge is left to the discretion of the prosecuting attorney for each Indiana county.

Similarly, not every case in which the death penalty is sought proceeds to trial. As with other cases, prosecuting attorneys are given discretion to enter into plea negotiations, offering the defendant a sentence less than death in exchange for a guilty plea. More capital cases are resolved by plea agreement than by trial.

The chart at the right demonstrates how this works in practice. During the years 1990



through 2000, according to FBI Uniform Crime Reports, there were 4617 murders and non-negligent homicides throughout the state of Indiana. No information is available regarding how many of these homicides were eligible for a death penalty request, meaning that one or more of the 16 aggravating circumstances could be alleged and the defendant was 18 or older. Prosecuting attorneys actually requested the death penalty in 153 of these homicides, 48 of the cases proceeded to a capital trial, and 25 actually resulted in death sentences.

As of December 3, 2004, there were 19 death penalty cases pending trial, sentencing, retrial, or resentencing.

### **Death Sentences Imposed Since 1977**

- 91 - sentenced to death
- 24 - currently under sentence of death: 23 men and 1 woman.
- 39 - no longer on death row due to reversals, resentencings, or dismissal of the death penalty request pending retrial or resentencing
  - 1 - death sentence commuted to life without parole by governor
  - 3 - death sentence vacated in proceedings which the state is appealing
  - 9 - awaiting a new trial or sentencing proceeding at which death is still a possible penalty
  - 1 - suicide
  - 1 - stabbed by fellow inmates
  - 2 - executed in other states for murders committed there.
  - 11 - executed by State of Indiana:
    - 4 were executed after waiving non-mandatory appeals:
      - Steven Judy - 1981
      - William Vandiver - 1985
      - Robert Smith - 1998.
      - Gerald Bivins - 2001
    - 7 were executed involuntarily:
      - Gregory Resnover - 1994
      - Tommie Smith - 1996
      - Gary Burris - 1997
      - D. H. Fleenor - 1999
      - Jim Lowery - 2001
      - Kevin Hough - 2003
      - Joseph Trueblood - 2003

### **PUBLIC OPINION**

- ☐ Although the majority of Americans say they generally support the death penalty, polls show that more people actually prefer the option of life without parole, which was adopted in Indiana in 1993. While life without parole in some states means

only that an inmate will not be eligible for parole for at least 25 years, in Indiana it means life without any possibility of parole.

- ❑ A survey of Indiana citizens conducted in 1993 shortly before Indiana adopted life without parole as a sentencing option for murder found that 56% of those polled said they strongly supported the death penalty and 76% said they generally supported the death penalty. However, when asked to choose between the death penalty and life without parole, 45% responded that they would prefer life without parole, compared to 40% who preferred death. When a requirement of prison work with money going to victims' families was added, 62% responded that they would prefer this option to the death penalty, compared to only 26% who still favored death. [The study was conducted by Indiana University Criminal Justice Professors Ed McGarrell and Marla Sandys. McGarrell currently serves as Director of the Hudson Institute's Crime Control Policy Center.]

## DETERRENCE

- ❑ In 1999, the average murder rate per 100,000 population among death penalty states was 5.5, compared with a rate of only 3.6 among non-death penalty states. Indiana's reported rate for 1999 was 6.6. According to FBI Uniform Crime Reports, the South, which accounts for 80% of U.S. executions, consistently has the highest murder rate, while the Northeast, which includes New York and Massachusetts and which accounts for fewer than 1% of executions, has the lowest murder rate.
- ❑ A study of homicide rates by the New York Times found that "during the last 20 years, the homicide rate in states with the death penalty has been 48 percent to 101 percent higher than in states without the death penalty. The study found that over that period, "homicide rates had risen and fallen along roughly symmetrical paths in the states with and without the death penalty, " suggesting that the presence or absence of the death penalty has little effect on homicide rates. *States With No Death Penalty Share Lower Homicide Rates*, Raymond Bonner & Ford Essenden, New York Times, Sept. 22, 2000.
- ❑ A study focusing on whether the death penalty deterred the murder of police officers concluded, "we find no consistent evidence that capital punishment influenced police killings during the 1976 - 1989 period. . . . [P]olice do not appear to have been afforded an added measure of protection against homicide by capital punishment." W. Bailey and R. Peterson, *Murder, Capital Punishment, and Deterrence: A Review of the Evidence and an Examination of Police Killings*, 50 Journal of Social Issues 53, 71, 1994.
- ❑ A 1995 national survey of police chiefs found that 67% of the chiefs surveyed did not believe that the death penalty significantly reduces the number of homicides; 82% said that they do not believe that murderers think about the range of possible

punishments before committing homicide; and 67% said the death penalty was not one of the most effective law enforcement tools. *On the Front Lines: Law Enforcement Views on the Death Penalty*, Death Penalty Information Center, 2/95.

## **COST**

- ❑ A 1988 in-depth investigative report of the cost of death penalty cases in Florida, conducted by *Miami Herald* reporters, found that the state had spent at least \$57,215,210 on the death penalty since 1973, to achieve 18 executions. This made the cost per execution over \$3 million dollars, more than 6 times the cost of imprisoning each man executed for 40 years at maximum security.
- ❑ The most comprehensive study of a state's costs for the death penalty was commissioned by the North Carolina Administrative Office of the Courts and conducted by Duke University professors in 1993. The professors concluded that the cost of a capital prosecution through to execution was more than double the cost of a noncapital prosecution *plus* the cost of incarceration. Factoring in the cost of capital cases that did not result in a death sentence or an execution, they found that "the extra cost per death penalty imposed is over a quarter million dollars, and per execution exceeds \$2 million."
- ❑ In a report from the Judicial Conference of the United States on the costs of the federal death penalty, it was reported that the *defense* costs were about 4 times higher in cases in which death was sought than in comparable cases in which death was not sought. The report also indicated that the *prosecution* costs in death penalty cases were 67% higher than the defense costs, and these costs did not include the cost of investigative services provided by law enforcement agencies.
- ❑ A recent study commissioned by the Indiana Criminal Law Study Commission and conducted by the Legislative Services Agency compared the costs in Indiana of a death penalty prosecution and incarceration through to the death of the defendant with the cost of a life without parole prosecution and incarceration through to the death of the defendant, and concluded that the death penalty was 30 - 37.5 per cent more expensive. Looking solely at trial level and direct appeal costs born by the counties, the study found that death penalty cases cost more than four times as much as cases in which the maximum penalty sought was life without parole. This study was included in the Commission's report to Governor O'Bannon, approved at its April 11, 2002 meeting.

## **INNOCENCE**

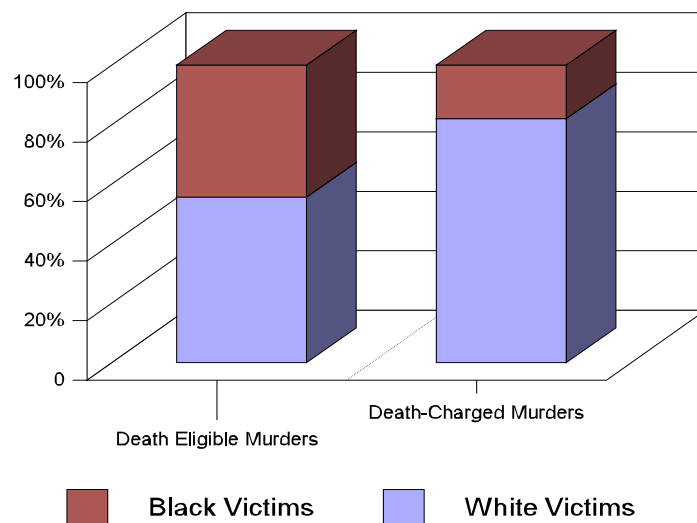
- ❑ Since 1970, more than 100 people in the U.S. have been exonerated and released from death row after being sentenced to death. There is no way of knowing how many of the more than 700 people executed in the U.S. in that time have also been innocent.

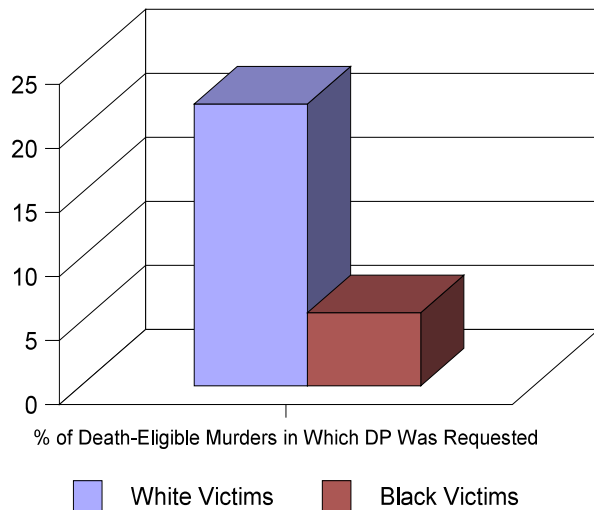
- ❑ In Indiana, 2 men have been sentenced to death and later acquitted at new trials.
  - ! Larry Hicks was convicted of murder and sentenced to death in Lake County in 1978. Two weeks before his scheduled execution in 1979, Larry Hicks sat on death row without an attorney. An attorney visiting another inmate discovered Hicks and petitioned trial court for new trial. A new trial was granted, and Hicks was acquitted and released.
  - ! Charles Smith was convicted of murder and sentenced to death in Allen County in 1983. In 1989, the Indiana Supreme Court reversed his conviction and sentence due to ineffective assistance of trial and appellate counsel. On retrial, Smith, who had come within three days of being executed, was acquitted on all counts.

## RACE AND THE DEATH PENALTY IN INDIANA

- ❑ Racial statistics for Indiana's death row mirror those of much of the nation's condemned. Although U.S. Census figures put Indiana's minority groups at less than 10% of the general population, they make up 25% of those currently under a sentence of death in Indiana. Also typical of death rows across the nation, the overwhelming majority (92%) of those under a death sentence in Indiana were sentenced to death for killing white victims.
- ❑ Data on the race of defendants and victims in all Indiana murders for which the death penalty could be requested is not available. However, attorneys for Gregory Van Cleave studied charging decisions in death-eligible homicides in Marion County for a period from 1979 through 1988. They determined that there were 187 solved, death-eligible homicides during this period in which victims were either black or white. The charts below illustrate their analysis.

Victims in 104 of these death-eligible cases, or 55.6%, were white, while the 23 cases involving white victims made up 82% of the total of 28 cases in which the death penalty was actually sought.





Another way of looking at this disparity is that the death penalty was requested in only 5.7% of death-eligible cases involving black victims, compared to 22% of death-eligible cases involving white victims. This means that the odds of the death penalty being requested for a white victim were 3.8 times higher than the odds of it being sought for a black victim.

- ❑ As part of its study of application of the death penalty in Indiana, the Indiana Criminal Law Study Commission commissioned a study of race and murder sentencing. Initial findings from this study, included in the Commission's April, 2002 report to Gov. O'Bannon, indicate that offenders who kill white victims are likely to be sentenced more severely and are more likely to be sentenced to death than offenders who kill non-white victims. Specifically, offenders convicted of murdering at least one white victim were 6 times more likely to receive the death penalty than those convicted of murdering only non-white victims, and were nearly 3 times more likely to receive a sentence of life without parole. The research team indicated that additional research and analyses would help explain whether race-neutral case factors are responsible for this apparent disparity, or whether similar defendants convicted of similar murders are in fact treated differently based upon the race of their victims. No further findings have been released.

*Current information available at Indiana Public Defender Council web-site:*  
[www.in.gov/pdc/general/dpinfo.html](http://www.in.gov/pdc/general/dpinfo.html)